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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 999 of 2014**

Surya Prakash Sharma S/o Rupchand Sharma, Aged About 40 Years, R/o. village -Katghora Road, Deepika, Thana- Deepika, Distt. Korba C.G.

**---- Appellant/Non-applicant No.2.**

**Versus**

1. Jamira Khatun W/o Late Mubark Kha, Aged About 38 Years.
2. Rehana Khatun D/o Late Mubark Kha, Aged About 15 Years.
3. Roji Khatun D/o Late Mubark Kha, Aged About 13 Years.
4. Samshad Ali S/o Late Mubark Kha, Aged About 12 Years.
5. Aashma Khatun D/o Late Mubark Kha Aged, About 8 Years.

   Respondent Nos.2 to 5 are minor, Thru- Legal Guardiah Smt. Jamira Khatun W/o Late Mubark Kha.
6. Juleja Khatun W/o Hadish Kha, Aged About 68 Years.

   All are R/o: village -Chamarpur, Mandal Shahpur, Distt. Bhojpur, (Bihar).

   **---- Applicants/Claimants.**
7. Ram Sarkar @ Golu @ Sager Pradhan, S/o Kashiram Pradhan, Aged About 19 Years, R/o -Navagaon Pakariya, Thana- Pamgarh, Distt. Janjgir-Champa C.G. **---- Non-applicant No.1.**
8. Branch Manager/Divisional Manager, Shriram General Insu. Co. Ltd., E/8, E.P.I.P. Ralko Industrial Area, Seetapur, District : Jaipur, Rajasthan. (3020022). **---- Non-applicant No.3.**

**--- Respondents**

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| For Appellant | : | Mr. A.L. Singroul, Advocate. |
| For Respondent Nos.1 to 7 | : | None. |
| For Respondent No.8 | : | Shri Utsav Mahiswar, Advocate. |

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**Hon'ble Shri P. R. Ramachandra Menon, CJ**

**Hon'ble Shri Parth Prateem Sahu, J**

**Order on Board**

**Per Parth Prateem Sahu, J**

**15/01/2021**

1. Appellant -owner of Truck bearing registration No.CG04/Z/2498 (for short 'offending truck') has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the impugned award dated 25.3.2014 passed by learned Additional Motor Accident Claims Tribunal, Bemetara, Distt. Bemetara (for short 'the Tribunal') in Claim Case No.81/2012, whereby the Tribunal partly allowed application filed under Section 166 of the Act of 1988; awarded a sum of Rs.4,77,000/- as total compensation in a fatal accident case and fastened liability upon non-applicant Nos.1 & 2.

2. At the outset, learned counsel for the appellant submitted that he is not challenging quantum of amount of compensation but only challenging the liability fastened upon appellant to satisfy the amount of compensation. Hence, this appeal is being heard in absence of service of notice upon respondent Nos.1 to 6/Claimants.

3. Facts relevant for disposal of this appeal are that Mubarak Khan (deceased) and Non-applicant No.1 were working as 'Driver' and Cleaner-cum-Helper-cum-Conductor respectively under non-applicant No.2-owner of offending truck. On 30.06.2011, they were going towards Raipur from Dipka Coal Mines after loading coal on offending truck. When they reached near Mohaline turn at Narayanpur, some mechanical fault occurred in the compressor of offending truck. After parking offending truck on the side of road, driver Mubarak Khan went beneath offending truck to check the defect, he asked non-applicant No.1 to start the truck and as soon he started the truck, it started moving and ran over driver Mubarak Khan. In this incident, driver Mubarak Khan suffered grievous injuries and died on spot. Accident was reported to the concerned Police Station based upon which crime was registered against non-applicant No.1.

4. Claimants, who are widow, children and mother of deceased, filed application under Section 166 of the Act of 1988 seeking compensation of Rs.44,80,000/- pleading therein that on the date of accident, deceased was working as 'driver of truck' and earing Rs.16,000/- per month. They were dependent upon income of deceased.

5. Non-applicant Nos.1 did not appear before the Tribunal, therefore, he was proceeded ex-parte.

6. Non-applicant No.2, owner of offending truck, submitted reply to application, while denying pleadings made therein admitted the employment of deceased as driver of his truck. He had shown his unawareness with regard to manner in which accident took place. On the date of accident, offending truck was having valid permit and fitness certificate and it was insured with non-applicant No.3-Insurance Company, hence, liability to satisfy the amount of compensation, if any, would be of Insurance Company.

7. Non-applicant No.3-Insurance Company, submitted reply to application, while denying pleadings made therein pleaded that amount of compensation claimed is highly exaggerated. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license, as such, there was breach of policy condition, therefore, Insurance Company is not liable to indemnify the insured.

8. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Mubarak Khan died on account of motor accidental injuries suffered by him in an accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of policy condition was found to be proved. Tribunal allowed claim application in part, awarded total compensation of Rs.4,77,000/- along-with interest @ 6% p.a and fastened liability upon non-applicant Nos.1 & 2 to satisfy the amount of compensation, jointly and severally.

9. Learned counsel for appellant submits that claimants in their claim application have very specifically pleaded the manner in which accident took place by stating that on the date of accident, offending truck on the way to Raipur from Deepika Coal Mines suffered some mechanical fault in its compressor; deceased after parking truck on the side of road, alighted down to

look into the fault under the body of truck. Non-applicant No.1 was asked to start the truck so as to check the fault in compressor but somehow truck started running and ran over the deceased. He further submits that similar fact has been mentioned in the final report placed on record as Ex.P-1 which shows that on the date of accident, non-applicant No.1 was not engaged by appellant as driver. He further submits that appellant in his reply has admitted the engagement of deceased as driver but denied the salary and daily allowance. There is no negligence on the part of appellant as he has engaged the deceased for driving offending truck and not non-applicant No.1. Copy of license of deceased is available on record, according to which, deceased was authorized to drive 'light motor vehicle' and 'heavy motor vehicle', the fact that deceased was possessed with licence to drive heavy motor vehicle itself is sufficient to prove the facts pleaded in application that deceased was working as driver. When he was trying to detect mechanical fault in compressor of offending vehicle, non-applicant No.1 started offending truck and it came in running condition. The accident happened on the midway and there is no willful breach of policy condition on the part of appellant. In support of his contention, he places his reliance on the judgments passed by Hon'ble Supreme Court in cases of **Sohan Lal Passi vs. P. Sesh Reddy & Ors**[1], **Kashiram Yadav & Anr vs. Oriental Fire & General Insurance Company & Ors**[2] **and National Insurance Company Limited vs. Swaran Singh & Ors**[3]. He further submits that Insurance Company could have been exonerated from its liability if there is willful breach of terms and condition of Insurance Policy on the part of appellant. Insurance Company has not brought on record any such evidence to prove willful breach.

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1 (1996) 5 SCC 21
2 (1989) 4 SCC 128
3 (2004) 3 SCC 297.

10. Per contra, learned counsel for respondent No.8/Insurance Company submits that from the records it is apparent that accident took place while non-applicant No.1 was driving offending truck and in support of this contention he referred final report and pleadings made in application. He further submits that at the time of accident, offending truck was driven by a person who is not having the valid and effective driving license, thus there was breach of policy condition. To prove breach of policy condition, Insurance Company has examined one Santosh Parishar, an Executive of Insurance Company as NAW/3-1, who proved insurance policy placed on record Ex.D-1 particularly the 'driver's clause' mentioned therein. Tribunal after considering the evidence and material available on record rightly arrived at a conclusion that there was breach of policy condition and exonerated Insurance Company from its liability, which does not call for any interference.

11. We have learned counsel for the respective parties and perused the record of claim case.

12. To appreciate the submissions made by learned counsel for appellant, we have perused the pleadings made in application. There is specific pleading that deceased was engaged by appellant as 'driver' of offending truck. It was also pleaded that due to some mechanical defect in the compressor of offending truck, deceased stopped the truck on road side, went under offending truck to check the fault and that is how he came under the truck when non-applicant No.1 started the truck. It appears from the pleadings that deceased while looking into mechanical fault, which is under the body of truck, he might have asked non-applicant No.1 to start the truck and when he started the truck, it started moving. No evidence and materials is placed on record showing that non-applicant No.1 was engaged as driver of truck.

13. Perusal of pleadings, evidence and documents clearly shows that non-applicant No.1 was accompanied with deceased in offending truck only as cleaner/helper/conductor. Appellant has not handed over offending truck to a person who was not possessed with driving license but appears that appellant has engaged a person who is having valid and effective driving license to drive offending truck ie deceased. A copy of license of deceased is also available in record at Page No.24 along-with un-exhibited documents. However, insurance company failed to prove that license of deceased available on record is not a valid license. In view of above facts available on record supported by documents, we are of the view that appellant has engaged the deceased and not non-applicant No.1 to drive offending truck. Even otherwise it is not the case of Insurance Company that non-applicant No.1 was engaged as a driver.

14. Witness Santosh Parihar was examined on behalf of Insurance Company in support of pleading with regard to breach of policy condition. He made statement on affidavit under Order 18 Rule 4 of CPC, based on the documents of criminal case. He stated about the manner in which accident took place and that at the time of accident, non-applicant No.1 was driving offending truck.

15. In view of above facts of the case, now the question arises for determination of this Court is, whether appellant had committed willful breach of policy condition.

16. Breach of policy condition with regard to driving licence will arrive only when owner of offending truck hand over or permit a person to drive offending truck who was not possessed with valid and effective driving license. At the same time, if any accident occurs from motor vehicle due to mis-chance then Insurance Company cannot escape from its liability to indemnify the insured.

17. In the case of **Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors**[4]**,** Hon'ble Supreme Court while considering the issue with regard to breach of policy condition on account of motor vehicle driven by a person who was not having valid and effective driving license, has held thus:-

> "14. Section 96 (2) (b) (ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driving by a named person or persons *or by any person who is not fully licensed,* or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation'. It is therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement of violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promiser must be a willful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the Insurance Company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mis-chance. When the insured has done everything within his power inasmuch as he has engaged licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself it cannot be said that the insured is guilty of any breach. And it is only in case of a breach of a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause........................................"

[4] (1987) 2 SCC 654

18. In **Kashiram Yadav's case** (supra) identical issue came up for consideration before Hon'ble Supreme Court and relying on its decision in case of **Skandia Insurance case Co. Ltd** (supra), it is held thus :-

> "**5.** Counsel for the appellants however, submitted that insurer alone would be liable to pay the award amount even though the tractor was not driven by a licensed driver. In support of the contention, he placed reliance on the decision of this Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors reported in (1987) 2 SCC 654. We do not think that that decision has any relevance to the present case. There the facts found were quite different. The. vehicle concerned in that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in the care of the cleaner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in the certificate of insurance since the cleaner operated the vehicle on the fatal occasion without driving licence. This Court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be established by the Insurance Company that the breach is on the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach.
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> **6.** We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance"

19. In case of **Sohan Lal Passi** (supra) Hon'ble Supreme Court while dealing with the situation where a bus driven by a person not having valid driving

license, met with accident, has approved its earlier judgment in case of **Skandia Insurance Co. Ltd,** (supra) and held thus :-

> **"13..**.............We are in respectful agreement with the view expressed in the case of **Skandia Insurance Co. Ltd,** (supra).
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> **14**. As in the facts of the present case, the appellant shall be deemed to be liable to pay compensation applying the principle of vicarious liability because the accident took place when the act authorised was being performed in a mode which may not be proper but was directly connected with in the course of employment, sub-section (1) of section 96 of the Act shall come into play and the insurance company shall be deemed to be the judgment debtor, so far the claim made by the heirs and legal representatives of the deceased is concerned.
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> **15**. Accordingly, the appeals are allowed and the orders of the claims Tribunal and the High Court are modified where only the appellant has been held to be liable to pay the compensation and the respondent insurance company has been absolved of the liability. The respondent insurance company shall be jointly and severally liable to pay the compensation to the claimants. There shall be no order as to costs.

20. Hon'ble Supreme Court in case of **Swaran Singh & Ors** (supra) had further considered the issue of license and liability of Insurance Company and held thus :-

> **"110.** (i) xxxx
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> (ii). xxx
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> (iii). The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

21. As far as the case law of **Samanna and Anr vs. Divisional Manager, Oriental Insurance Company Limited and Ors**[5]**,** relied upon by learned counsel for respondent/ Insurance Company, the legal proposition laid down by Hon'ble Supreme Court is with regard to issue of pay and recover where Tribunal after arriving at a finding that there was breach of policy condition, directed Insurance company to pay the amount of compensation to claimant and granted liberty to Insurance Company to recover the same from owner of offending vehicle.

22. In case at hand, consideration is somewhat different, whether appellant knowingly has engaged non-applicant No.1 as driver of offending truck or he has engaged a person to drive offending truck who is having valid and effective driving license and thereby complied with condition of Insurance Policy. As we have discussed above, the entire case is that deceased himself was driver of offending truck who was possessed with valid and effective driving license but on account of some mechanical fault when he gets down of offending truck to look into that fault, non-applicant No.1 started the said truck which started running. This accident took place on the way where truck was running to which appellant was not having any command over it. Copy of driving license was seized by the Police vide Ex.P-15 along-with other documents of offending vehicle like RC Book, permit, fitness certificate and Insurance policy.

23. In the facts and circumstances of the case and taking support of the aforementioned rulings of Hon'ble Supreme Court in cases of **Skandia Insurance Co. Ltd,** (supra), **Sohan Lal Passi** (supra), **Kashiram Yadav & Anr** (supra) and **Swaran Singh & Ors** (supra), we are of the view that Tribunal erred in exonerating the Insurance Company from its liability. We accordingly set aside the said finding of exoneration of insurance Company and hold that

5 (2018) 9 SCC 650,

appellant and respondent No.8/Insurance Company are jointly and severally liable to pay the amount of compensation to claimants. Respondent No.8 being Insurer shall have the first responsibility to satisfy the amount of compensation awarded by Tribunal. Appellant will be entitled to recover the amount so deposited by him upon depositing the entire amount of compensation by respondent No.8 in accordance with law.

24. In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated above.

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| **Sd/-** | **Sd/-** |
| **(P. R. Ramachandra Menon)**<br>Chief Justice | **(Parth Prateem Sahu)**<br>Judge |

Jamal/-